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**OPEN MEETING AGENDA ITEM**



DOCKET NO. T-0105B-06-0175 et al.

12

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**JEFF HATCH-MILLER**  
Chairman  
**WILLIAM A. MUNDEL**  
Commissioner  
**MIKE GLEASON**  
Commissioner  
**KRISTEN K. MAYES**  
Commissioner  
**BARRY WONG**  
Commissioner

Arizona Corporation Commission

**DOCKETED**

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IN THE MATTER OF QWEST	)	DOCKET NO. T-01051B-06-0175
CORPORATION'S	)	DOCKET NO. T-02556A-06-0175
APPLICATION FOR ARBITRATION	)	DOCKET NO. T-03693A-06-0175
PROCEDURE AND APPROVAL OF	)	
INTERCONNECTION AGREEMENTS	)	
WITH HANDY PAGE, AND PURSUANT	)	
TO SECTION 252(B) OF THE	)	
COMMUNICATIONS ACT OF 1932, AS	)	INTERSTATE WIRELESS, INC D/b/a
AMENDED BY THE	)	HANDY PAGE'S EXCEPTIONS TO THE
TELECOMMUNICATIONS ACT OF	)	RECOMMENDATION OF THE
1996, AND THE APPLICABLE STATE	)	ADMINISTRATIVE LAW JUDGE
LAWS.	)	

**Exceptions to the Recommendation of Arizona Corporation Commission**  
**Administrative Law Judge Amy Bjelland in Docket No. T- 01051B-06-0175 et al.**

These exceptions are filed pursuant to A.C.C. R14-3-110(B).

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## Summary

The Administrative Law Judge (ALJ) in the instant matter erred in the Recommendation and Proposed Order of the Commission ("Recommendation") on the following points:

- The ALJ finding with regard to the Staff Statement in paragraph 22, that WAC call traffic is not subject to reciprocal compensation, is obviously contrary to current law and FCC rules.
- The ALJ finding in paragraph 28, that Qwest is permitted by FCC rules to charge Handy Page for delivery of WAC traffic, is contrary to current law and FCC rules.
- The ALJ finding in paragraph 29, that WAC is a tariffed billing service unnecessary for interconnection, and is therefore not a telecommunications service subject to arbitration under Section 251(b) of the Act, is contrary to current law and FCC rules.
- The ALJ finding in paragraph 21, that Qwest's WAC service may be offered on a tariffed basis, rather than through interconnection, is contrary to current law and FCC rules.
- The ALJ finding in paragraph 29, that no other items remain to be arbitrated between Qwest and Handy Page, is incorrect and Handy Page does have a basis for the arbitration of certain provisions of the Qwest proposed interconnection agreement.

## Exceptions

**The ALJ finding in paragraph 22, in reliance upon the ACC Staff Statement, that WAC call traffic is not subject to reciprocal compensation, is obviously contrary to current law and FCC rules.**

There are two distinct kinds of WAC call traffic, **intra**-MTA call traffic (non-access/local -where the call originates and terminates within the *same* MTA) and **inter**-MTA (access/IXC toll -where the call originates in one MTA and is terminated in *another* MTA) call traffic. The Federal Communications Commission ("FCC") has a different set of rules for the Compensation obligations placed on carriers depending on whether the traffic at issue is **intra**-MTA or **inter**-MTA. The most egregious error in this matter is that neither the Staff in its Statement nor the ALJ in the Recommendation made any distinction between **intra**-MTA WAC call traffic, which

is subject to Reciprocal Compensation by FCC rules, and **inter**-MTA WAC call traffic which is not subject to the FCC's reciprocal compensation rules.

Contrary to the Staff Statement referenced in Paragraph 22 in the Recommendation, the FCC has definitively stated in its *TSR Wireless Order* at paragraph 31 that all **intra**-MTA call traffic, (regardless of whether the originating carrier feels its classification is "local" or "toll"), which would include all Qwest WAC calling, is subject to Reciprocal Compensation. The ALJ erroneously found in the last sentence of paragraph 22 that WAC service is not subject to reciprocal compensation:

*Staff therefore concluded that Qwest's WAC service is not subject to reciprocal compensation and is therefore not subject to interconnection agreement.*

This conclusion, if it applies to **intra**-MTA WAC call traffic, directly and irrefutably conflicts with the FCC's quoted statement from the *TSR Wireless Order*<sup>1</sup> provided earlier in paragraph 22 of the Recommendation, regarding all Intra-MTA (including WAC) traffic:

*Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier. (emphasis added)*

All WAC traffic discussed in this docket is carried by Qwest, not an interexchange carrier, and Qwest has not disputed that *all* of the WAC traffic here at issue in this docket is **intra**-MTA. Neither ACC Staff nor the ALJ have attempted to explain how the conclusion was reached that the **intra**-MTA WAC traffic here at issue is not subject to Reciprocal Compensation in the face of this very clear FCC ruling to the contrary. Any claim or holding that **intra**-MTA WAC traffic is "toll" traffic is not germane to this FCC rule which states very clearly that *all* Qwest originated, **intra**-MTA call traffic carried by Qwest, and delivered to a CMRS carrier such as Handy Page, is defined as "local" traffic under FCC rules and is subject to Reciprocal Compensation.

In line 10 of paragraph 22 of the Recommendation, the ALJ noted that:

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<sup>1</sup> See FCC 00-194, *TSR Wireless vs Qwest, et al.* Released June 21, 2000

*Staff and Qwest note that in its TSR Wireless Order, the FCC specifically determined that rule 51.703(b) did not prohibit Qwest from charging for WAC.*

It should be noted however, that under FCC rules, only **inter**-MTA WAC traffic would fit this definitive statement and allow Qwest to charge for the call traffic under a state tariff. Under FCC rules, Qwest is prohibited from charging for all **intra**-MTA Qwest originated WAC traffic. This extremely vital point has not been refuted anywhere in the proceedings or in the Recommendation.

Please note that the FCC's *TSR Wireless Order* was released on June 21, 2000. However, in paragraph 19 of the Recommendation, the ALJ noted, "*Staff and Qwest agree that under the T-Mobile Order, the FCC amended its rules to **prohibit LECs from imposing compensation obligations for reciprocal compensation traffic pursuant to tariff***" (emphasis added). The FCC's *T-Mobile Order* was released on February 24, 2005.

Handy Page pointed out in its Opening Brief, (see page 9 and footnote 20) that the FCC's 2005 *T-Mobile Order* specifically modified the conclusions of the 2000 *TSR Wireless Order* with respect to Qwest's authority to charge Handy Page for any calls subject to Reciprocal Compensation, which includes **intra**-MTA WAC calls. The *T-Mobile Order* explicitly prohibits Qwest from charging for any Qwest originated, **intra**-MTA calls, including WAC calls regardless of how they are characterized, that fall under the FCC's Reciprocal Compensation rules. It is important to note that the FCC did not mention any exceptions for **intra**-MTA WAC calls in the *T-Mobile Order*. Qwest even acknowledges that the **intra**-MTA WAC call traffic is subject to Reciprocal Compensation, as the ALJ points out in paragraph 26:

*Qwest is agreeable to paying Handy Page termination compensation for Qwest originated intra-MTA calls, including WAC calls, for Type 2 interconnection.*

As a consequence of the legal determination that **intra**-MTA WAC traffic is subject to Reciprocal Compensation, the FCC's 2005 *T-Mobile Order*<sup>2</sup> does, in fact and law, apply to the Qwest **intra**-MTA WAC call traffic here at issue, and thus invalidates any perceived claim in the prior 2000 *TSR Wireless Order* regarding Qwest's authority to charge Handy Page state tariff charges for **intra**-MTA WAC. It is evident that ACC Staff reached its erroneous conclusion that **intra**-MTA WAC

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<sup>2</sup> See, *T-Mobile, etc. Petition for Declaratory Ruling*, FCC 05-42, released February 24, 2005

service is not subject to Reciprocal Compensation by reading and quoting only from paragraph 30 of the *TSR Wireless Order* in its September 4, 2006 Statement, and somehow failing to take note of or understand paragraph 31 of that Order.

It defies logic and reason that the ALJ could quote the *TSR Wireless Order* paragraph 31, including the FCC statement that all **intra**-MTA traffic *is* subject to Reciprocal Compensation, and then in the very same paragraph quote and endorse the ACC Staff's erroneous and unsupported finding that WAC *is not* subject to Reciprocal Compensation. The only explanation is that neither the Staff nor the ALJ were aware of the distinction between the **intra**-MTA (non-access/local) WAC traffic and **inter**-MTA (access/IXC toll) WAC traffic. Simply put, the ACC Staff erred in its conclusion that **intra**-MTA WAC is not subject to reciprocal compensation and the ALJ repeated this error, even while quoting the FCC's *TSR Wireless Order* paragraph 31 that directly contradicts the Staff finding and plainly states that **intra**-MTA call traffic (which includes the Qwest WAC calls) is subject to Reciprocal Compensation.

A finding by the ACC that the Qwest **inter**-MTA WAC service is "not necessary for interconnection" *does not* in any way invalidate Qwest's federal obligations under current FCC rules (see 47 C.F.R. 20.11) that prohibit state tariff charges for any call traffic which *is* subject to Reciprocal Compensation. No party to this proceeding has shown any basis in rule or law which would exclude the Qwest **intra**-MTA WAC traffic here at issue from such federal obligation.

The Commission should also note that the FCC in its *TSR Wireless Order* at paragraphs 30 and 31, made obvious conflicting statements regarding WAC (otherwise known as "reverse billing") that would very likely not withstand a Federal Court appeal, in a manner similar to the obviously conflicting statements made in this proceeding by both ACC Staff and the ALJ. The FCC did not make clear *how* in its statements in the *TSR Wireless Order* paragraphs 30 and 31 that its comments allowing a LEC, such as Qwest, to charge for WAC (or similar services) would only apply to LEC originated, **inter**-MTA call traffic, which is not classified as "local" traffic subject to the FCC's reciprocal compensation rules. To illustrate this, note that the FCC made the following statement in its *TSR Wireless Order* paragraph 30:

*We conclude, therefore, that Section 51.703(b) does not compel a LEC to offer wide area calling or similar services without charge.*

But the FCC turned around and emphatically prohibited any LEC from charging for delivery of any **intra**-MTA WAC traffic by citing the Reciprocal Compensation rules in paragraph 31 that all LEC originated, **intra**-MTA (non-access) traffic *is* subject to Reciprocal Compensation:

*Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules.<sup>3</sup> Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier.<sup>4</sup> (emphasis added)*

Obviously, if the **intra**-MTA WAC traffic *is* subject to Reciprocal Compensation, then the traffic does fall under 47 U.S.C. § 51.703(b) and a LEC, such as Qwest, cannot charge a CMRS carrier, such as Handy Page, for that traffic. The FCC in paragraph 31 of the *TSR Wireless Order* went on to illustrate the Reciprocal Compensation rules with respect to **intra**-MTA WAC traffic by showing that US West (now Qwest) would be responsible for the facilities used to transport the WAC traffic to the point of interconnection with the CMRS carrier. Further, the ACC should note that Qwest has implicitly acknowledged that the **intra**-MTA WAC traffic *is* subject to Reciprocal Compensation by “offering” to pay Reciprocal Compensation to Handy Page for all **intra**-MTA WAC traffic. Whether the originating carrier, such as Qwest, feels the **intra**-MTA WAC call traffic is “toll” or not is immaterial to the FCC’s **intra**-MTA calling rules for CMRS carriers such as Handy Page. Although ACC Staff, Qwest and the ALJ Recommendation have claimed the **intra**-MTA (non-access) WAC traffic is “toll” traffic, this distinction, whether correct or not (it is not), has no bearing on and *is not* germane to the classification of the **intra**-MTA WAC traffic as subject to the Reciprocal Compensation rules of the FCC including both the *TSR Wireless Order* and the *T-Mobile Order*.

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<sup>3</sup> See 47 C.F.R. § 51.701(b)(2); see also *Local Competition Order*, 11 FCC Rcd at 16016-17.

<sup>4</sup> *Local Competition Order*, 11 FCC Rcd at 16016-17.

For the preceding reasons, Handy Page herein requests that the ACC reverse the ALJ's Recommendation and declare that all Qwest **intra**-MTA WAC call traffic *is* subject to Reciprocal Compensation.

**The ALJ finding in paragraph 28, that Qwest is allowed by FCC rules to charge Handy Page for delivery of WAC traffic, is contrary to current law and FCC rules.**

The ALJ makes the following statement in paragraph 28 of the Recommendation:

*We agree with Qwest that the TSR Wireless Order addresses the same matter at issue in this Docket. The FCC found that WAC service is unnecessary for interconnection or the provision of the paging or wireless carrier to its customers.<sup>10</sup> (<sup>10</sup> TSR Wireless Order at ¶30)*

In making this statement, the Staff and ALJ once again fail to distinguish between **intra**-MTA (non-access/local) WAC traffic which is subject to Reciprocal Compensation by FCC rules and **inter**-MTA (access/IXC toll) WAC call traffic which is not subject to the FCC's reciprocal compensation rules. Additionally, this grammatically questionable statement (read the second sentence carefully) does not take into account the subsequent change in law made by the FCC in its 2005 *T-Mobile Order* or the FCC's very clear and unambiguous statement regarding traffic subject to Reciprocal Compensation in the *TSR Wireless Order* at paragraph 31.

The ALJ finding in paragraph 28 of the Recommendation was based solely on paragraph 30 of the *TSR Wireless Order*, and in particular this sentence:

*We conclude, therefore, that Section 51.703(b) does not compel a LEC to offer wide area calling or similar services without charge.*

However, the FCC's subsequent *T-Mobile Order* of February 24, 2005 does *not* allow a LEC such as Qwest to charge a CMRS carrier such as Handy Page for any **intra**-MTA call traffic including **intra**-MTA WAC traffic. This change in the law was noted in paragraph 22 of the Recommendation at line 10:

*Staff and Qwest agree that under the T-Mobile Order, the FCC amended its rules to **prohibit LECs from imposing compensation obligations for reciprocal compensation traffic pursuant to tariff**. (emphasis added)*

In conjunction with current FCC rules that very clearly state that all **intra**-MTA traffic, including all **intra**-MTA WAC traffic, *is* subject to Reciprocal Compensation, the findings in paragraph 28 of the Recommendation are invalid and contrary to current law and FCC rules. Additionally, the ALJ did not provide any basis in law, rule or the proceeding at hand for the paragraph 28 holding:

*We find that Handy Page's arguments that no "toll" calls exist between Qwest and Handy Page's interconnection is erroneous.*

In contrast to this unsupported statement, Handy Page has provided a great deal of references and FCC rules that support the Handy Page position that no "toll" calls exist between Qwest and Handy Page's WAC interconnection. (See, September 1, 2006 Handy Page Reply Brief, Pages 3 and 4):

In this paragraph taken from the *TSR Order*, the FCC does not explain where the "*toll calls completed over the Yuma-Flagstaff T-1*" would originate. At first glance, one would assume the calls dialed by Qwest end-users to the paging carrier assigned number resources (Type 1 number block or NXX code) in Yuma would be the "toll calls" referenced by the FCC. However, this cannot be true because calls are rated (a determination of local or toll) by the originating and terminating NXX codes,<sup>5</sup> not the POI of the terminating CMRS carrier. In this case, the calls are local calls because both the Qwest originating line and the called number are always in the same rate center, based on the information in the *TSR Order* paragraphs 30 and 31. So, although according to the *TSR Order*, "*nothing prevents U S West from charging its end users for toll calls completed over the Yuma-Flagstaff T-1*", there are no "toll calls" possible in this situation

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<sup>5</sup> In the Qwest Arizona WAC configuration the dialed terminating NXX code is within the same rate center as the originating NPA-NXX code and is therefore a "local" call. See also Paragraph 301, DA 02-1731, *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.*, rel. 7/17/2002. "We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes."



and only local calls are carried over the Yuma-Flagstaff T-1 (a dedicated inter-office trunk). Similarly, there are no "toll calls" possible over the Qwest Arizona **intra**-MTA WAC that sends calls to Handy Page, because the originating line and the called number are in the same rate center and therefore the WAC could only originate local calls sent to Handy Page.

Rather than having its well founded argument dismissed without discussion of the basis therefore, Handy Page deserves to know the reasoning behind the ALJ's determinations in these proceedings, and to have a complete record for a potential appeal. For the preceding reasons, Handy Page herein requests that the ACC reverse the ALJ's Recommendation and declare that Qwest *is not* permitted by FCC rules to charge Handy Page for the delivery of WAC traffic.

**The ALJ finding in paragraph 29, that WAC is a tariffed billing service unnecessary for interconnection, and is therefore not a telecommunications service subject to arbitration under Section 251(b) of the Act, is contrary to current law and FCC rules.**

The following statement was taken from paragraph 29 of the Recommendation to the ACC:

*Under the applicable law and rules, WAC is a tariffed billing service unnecessary for interconnection, and is therefore not a telecommunications service subject to arbitration under Section 251(b) of the Act. Qwest's offering of WAC by way of its tariff is appropriate.*

Again, the Staff and ALJ failed to distinguish between **intra**-MTA (non-access/local) WAC traffic which is subject to Reciprocal Compensation by FCC rules and **inter**-MTA (access/IXC toll) WAC call traffic which is not subject to the FCC's reciprocal compensation rules.

Therefore, in the absence of an explanation as to which kind of WAC call traffic the statement applies, this declaration is in direct conflict with the FCC's *TSR Wireless Order* at paragraph 31, as quoted in paragraph 22 of the Recommendation:

*Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA,*

*as this constitutes local traffic under our rules. Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC...* (emphasis added)

Additionally in Paragraph 22 of the Recommendation, at line 10, the ALJ relies on the Staff's interpretation of the *T-Mobile Order*:

*Staff and Qwest agree that under the T-Mobile Order, the FCC amended its rules to **prohibit LECs from imposing compensation obligations for reciprocal compensation traffic pursuant to tariff.*** (emphasis added)

In combination, the previous two statements say the following: (1) Traffic to or from a CMRS carrier that originates and terminates in the same MTA is "local"; (2) Local traffic falls under Reciprocal Compensation rules if carried by the incumbent LEC; and (3) LECs are prohibited from charging for Reciprocal Compensation traffic *pursuant to tariff*. The above quoted statements contained within the ALJ's Recommendation thus clearly demonstrate that the Qwest **intra**-MTA WAC service falls under the FCC's Reciprocal Compensation rules and is therefore a service subject to arbitration and, additionally, that the Qwest **intra**-MTA WAC service calls cannot be billed under a state tariff.

For the preceding reasons, Handy Page herein requests that the ACC reverse the ALJ's Recommendation and declare that **intra**-MTA WAC is a telecommunications service subject to arbitration under Section 251 (b) of the Act.

**The ALJ finding in paragraph 21, that Qwest's WAC service may be offered on a tariffed basis, rather than through interconnection, is contrary to current law and FCC rules.**

The ALJ makes the following statement in paragraph 21 of the Recommendation:

*Staff agrees with Qwest that under the TSR Wireless Order, Qwest's WAC service may be offered on a tariffed basis, rather than through interconnection.*

Again, the Staff and ALJ failed to distinguish between **intra**-MTA WAC traffic which is subject to Reciprocal Compensation by FCC rules and **inter**-MTA call traffic which is not subject to the

FCC's reciprocal compensation rules. The quoted Staff statement ignores the FCC's *TSR Wireless Order* paragraph 31 statement regarding the classification of all **intra**-MTA calls as being subject to Reciprocal Compensation. Additionally, the *T-Mobile Order* prohibited LEC charges for Reciprocal Compensation traffic under a state tariff as acknowledged by the ALJ in line 10 of paragraph 22 of the Recommendation. In other words, the Qwest Arizona tariff related to Qwest originated, **intra**-MTA calls delivered to a CMRS carrier such as Handy Page, can no longer apply to such calls under Federal law. The *T-Mobile Order* was issued subsequent to the *TSR Wireless Order*, and thus where the two Orders come into conflict, the decision in *T-Mobile* is clearly controlling. The conflicts between the two rulings have been clearly demonstrated both herein and in the record sitting before the ACC, yet there was no discussion of this salient point in the Recommendation.

Additionally, please note that Qwest's offering of **intra**-MTA WAC service under a state tariff is a violation of the FCC's rules prohibiting use of a tariff process to circumvent the section 251 and 252 processes for interconnection between a LEC and a telecommunications carrier such as Handy Page.<sup>6</sup>

For the preceding reasons, Handy Page herein requests that the ACC reverse the ALJ's Recommendation and declare that Qwest's WAC service may not be offered on a tariffed basis and is a telecommunications service subject to arbitration under Section 251(b) of the Act.

**The ALJ finding in paragraph 29, that no other items remain to be arbitrated between Qwest and Handy Page, is incorrect and Handy Page *does* have a basis for Arbitration of the Qwest proposed interconnection agreement.**

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<sup>6</sup> See, *Bell Atlantic-Delaware, Inc., et al., v. Global NAPs, Inc.*, 15 FCC Rcd 12946, 12959, para 23 (1999) (*Global NAPs*), *recon. denied*, *Bell Atlantic-Delaware, Inc. v. Global NAPs, Inc.*, 15 FCC Rcd 5997 (2000); *Bell Atlantic-Delaware, Inc., v. Global NAPs, Inc.*, 15 FCC Rcd 20665 (2000) (*Global NAPs II*) where the Commission [FCC] found Global NAPs' tariff unlawful because, *inter alia*, it "purport[ed] to apply the [terms of the] tariff even when a valid interconnection agreement could be in place." *Id.* See also *Global NAPs II*, 15 FCC Rcd at 20671, para. 16 (stating that "[i]f a party to an interconnection proceeding could alter the outcome of the negotiation/mediation/arbitration processes set forth in sections 251 and 252 simply by filing a federal tariff, those processes could become significantly moot.").


Handy Page previously agreed that there were not any provisions in the Qwest proposed interconnection agreement to arbitrate, but that position was based on the premise that the ACC would issue a ruling in the instant proceeding in conformance with current law and FCC rules. If, as the ALJ Recommendation indicates, the ACC determines that Handy Page is obligated to pay Qwest for call traffic that is subject to the FCC's Reciprocal Compensation rules, then Handy Page is entitled by FCC rule to *include* such direct costs in calculating the Reciprocal Compensation transport and termination rate Handy Page may charge to Qwest. (See FCC 96-325, paragraph 1093, 47 U.S.C. §51.507 and §51.709(a), and the FCC's *TSR Wireless Order*) Therefore, in the event the ACC accepts the Recommendation of the ALJ, Handy Page requests the ACC arbitrate the Reciprocal Compensation rate that Handy Page may charge Qwest for terminating WAC call traffic.

Additionally, Handy Page is entitled to adjustment of the transit traffic percentage to reflect the maximum total transit traffic possibly traversing the interconnection facilities here at issue. As established in the Data Requests and the Briefs of Qwest and Handy Page, **all WAC calls are Qwest originated, intra-MTA (non-access/local) calls**. Therefore, the transit traffic percentage in the Interconnection Agreement between Qwest and Handy Page should be set at zero (-0-) since there is no transit traffic involved in any of the WAC calls here at issue. This uncontested fact cannot be disregarded. Therefore, Handy Page requests the ACC arbitrate the transit traffic percentage of the proposed Interconnection Agreement.

For the preceding reasons, Handy Page herein requests the ACC reverse the ALJ's Recommendation and declare that Handy Page *does* have a basis for Arbitration of the Qwest proposed interconnection agreement.

DATED this 11<sup>th</sup> day of October, 2006.

Interstate Wireless, Inc.  
d/b/a Handy Page

By: \_\_\_\_\_

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